

REGULAR MEETING JANUARY 4, 2011:

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The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers on Monday January 4, 2011 at 7:30 P.M.

PRESENT: City Manager Terrence Moore, Assistant City Manager Jeff Mikorski, Mayor Bill Byrne, City Clerk Linda Little, Council Members Ron Bane, John Gaddis, Charlie Byrer, Jenny Selin, Marti Shamberger and Don Spencer.

APPROVAL OF MINUTES: Minutes from the regular meeting on December 21, 2010 were approved as printed.

CORRESPONDENCE: Mayor Byrne announced Mr. Jeremy Bartholow and the members of his shop class who hand crafted wooden pens for each member of Council. He then asked Mr. Bartholow to make a few remarks about his student's gifts to Council. Mr. Bartholow noted that the pens are made from wood from the ship 'Susan Constant' which was an original founder of Jamestown. He then introduced students, Sean Holmes and Zach Kramer.

PUBLIC HEARING - AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING ARTICLE 105 OF THE ADMINISTRATIVE CODE BY ADDING A NEW SECTION 105.48 ADOPTING AND IMPLEMENTING THE NEW MUNICIPAL VOTE BY MAIL PILOT PROGRAM ESTABLISHED BY SECTION 3-3A-1 SEQ. OF THE WEST VIRGINIA CODE:

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Jim Manilla 202 Gordon Street, welcomed the new City Manager, Mr. Moore. He then spoke in opposition to the Vote-By-Mail Pilot Program. He stated that he does not feel the cost difference will be considerable. He talked about voter turn-out and suggested that the new process will change the way a candidate campaigns for the election. He feels that more money will be raised and special interest groups will get involved, especially if candidates can go door to door petitioning for votes from otherwise, uneducated voters. He also expressed concern over voter fraud possibilities with the signature verification process. He suggested Council impose term limits as a way to increase voter turnout and also increase the number of candidates. He feels that an optional vote by mail which leaves polling places in tact is a better option.

Donald Price 251 Wagner Road, presented a fictional scenario, which he perceives to be a real threat, to Council in which a candidate could unlawfully and unethically influence voters because of the Vote-By-Mail Pilot Program. He then asked Council to not go forward with the Vote-By-Mail Pilot Program, and not put ballots into the hands of those who do not care about City issues. He feels the program makes it too easy for misrepresentation and for candidates and others to manipulate voters.

Matthew Held 213 Kingwood Street, President of Greenmont neighborhood association, informed Council that due to the rushed nature of the Vote-By-Mail Pilot Program and the holiday season, he has not presented this issue to the neighborhood association and he does not know what their wishes are regarding the matter. He asserted that no other neighborhood associations were given information or made aware of the Vote-By-Mail Pilot Program besides a brief document presented to the Neighborhood Coordinating Council. He suggested that Council vote yes on the Vote-By-Mail Pilot Program and apply it to the next election in order to have more research and discussions on the matter.

Mike Callen 1420 Western Avenue, expressed that he feels credible elections are the foundation of good democracy. He stated that West Virginia has a sordid history of election fraud and it is an issue. He feels the potential for undue influence is a problem along with special interest groups. He asked that Council put the plan on hold. He stated that informed voters are more important than an increased voter turnout.

David McKain 145 Hoffman Avenue, spoke in opposition to the Vote-By-Mail Pilot Program. He asserted that an increase in voter turnout will not necessarily mean an increase in informed voting. He believes that costs related to printing and mailings have not been accurately tabulated and this could pass on undue costs to the voters.

There being no more appearance, Mayor Byrne declared this Public Hearing closed.

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PUBLIC HEARING - AN ORDINANCE AMENDING THE FY 2010-2011 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND:

- There being no appearance, Mayor Byrne declared this Public Hearing closed.

- **UNFINISHED BUSINESS:**

- **AN ORDINANCE ADOPTING AND IMPLEMENTING THE NEW MUNICIPAL VOTE BY MAIL PILOT PROGRAM:** The above entitled Ordinance was presented for second reading:

AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING ARTICLE 105 OF THE ADMINISTRATIVE CODE BY ADDING A NEW SECTION 105.48 ADOPTING AND IMPLEMENTING THE NEW MUNICIPAL VOTE BY MAIL PILOT PROGRAM ESTABLISHED BY SECTION 3-3A-1 SEQ. OF THE WEST VIRGINIA CODE:

- Motion by Spencer, second by Selin to approve the above entitled Ordinance. Councilor Byrer raised questions about the cost of printing and postage stating that he feels it may cost more than other elections. Councilor Selin asked whether there is a report on the cost. Councilor Spencer suggested the City Clerk, and other representatives speak at this time. Mayor Byrne agreed, asking for a motion to suspend the rules to allow further discussion. Motion carried by unanimous consent.

City Clerk Little reported that she, Dave Nichols from the Secretary of State's Office and Carye Blaney met to discuss the Vote-By-Mail Pilot Program. She asked that Mr. Nichols explain, to relieve Council of their concerns.

Mr. Nichols explained that many of the logistical issues were resolved and election vendors were contacted to get prices this afternoon. He estimates that the election could cost as much as \$18,000 -which is lower than traditional elections. He added that the goal is indeed an informed voter but a voter's right to the vote is Constitutional and not based on how educated the person is. The level of information getting to a voter should come from the candidates, and it is their job to inform the voters.

Mayor Byrne asked that Mr. Nichols specifically address the costs. Mr. Nichols responded that costs could vary depending on the size of the envelope, and postage costs, among other factors. He added that the City could get a bulk rate to further drive down the cost of the postage. He explained how different envelopes are priced differently based on their size and availability.

Councilor Bane asked whether other costs such as training and public education are factored into that cost. Mr. Nichols replied that it is not, however the Secretary of State has offered to cover some of the cost of public education and training for the Vote-By-Mail Pilot Program.

Councilor Byrer asked if the voter is responsible for paying postage on the return envelope. Mr. Nichols answered that it is not postmarked because there will be ballot deposit locations and there are various methods other than mailing to return the ballot envelope.

Mayor Byrne raised points of fraud and undue influence and asked whether the issue has been investigated in the State. Mr. Nichols replied that yes it has been researched. The first thing that the Secretary of State's office did was look into how many incidences of fraud and voter intimidation there have been in other places where Vote-By-Mail takes place. He reported that these instances are exceedingly rare. He doesn't expect that voter fraud would begin to crop up where it didn't already exist. Voter fraud has not materialized in other areas that previously had no problems. He addressed voter intimidation and undue influence stating there have been no instances or reports made in other communities using Vote-By-Mail.

Councilor Spencer asked about the increased use of absentee ballots. Mr. Nichols reported that there has been an increase in the use of absentee voting in recent years. Councilor Spencer asked for statistics, and Mr. Nichols did not have any, but promised to report later. Councilor Spencer asserted that it would be inconsistent to be concerned over fraud with the Vote-By-Mail Pilot Program and not be concerned about absentee voting, as they are essentially the same thing. Mr. Nichols responded that in many places, the Vote-By-Mail Pilot Program has resulted in a system of no excuse absentee voting. He agreed with Councilor Spencer that this line of thinking seems counter-intuitive.

Councilor Gaddis asked how many precincts participate in the early voting. Ms. Little the City Clerk answered that it

is City-wide. Councilor Gaddis asked how many locations will be available for voting under a normal election. Ms. Little replied she believes 28 or so. He then asked why not downsize the polling places and have multiple precincts voting in one location in order to save costs. Ms. Little replied that it would be a legislative issue, and Mr. Nichols agreed.

Councilor Bane conceded that you cannot measure instances of voter influence and fraud. He did reiterate that he has concerns over family members or others voting together at home and influencing each other, where the secret ballot concept may be lost. He inquired whether putting campaign signs in your own yard is a violation of election law if, in theory, the polling place is your own home because of Voting-By-Mail. Mr. Nichols responded that if the your home is legally defined as a polling place by Council, then it would be up to a citizen to report any complaint and a court would decide whether there was a violation of any laws. Councilor Bane insisted that this is a very difficult question and only one of many that are hard to answer concerning this process.

Mayor Byrne asked if there are any more questions or discussion, and Councilor Spencer suggested that a representative from the League of Women Voters be heard at this time. Mayor Byrne asked Kitty Lozier of the League to come forward. Ms. Lozier reported that her main concern was the speed at which the process is being pushed and whether the signature verification process and safety of the ballots can be properly addressed. She added that many people can benefit from the Vote-By-Mail Pilot Program and no one is as leery of the prospect as people think. She stated she would like to see the initiative pass as it may well be a good option to see how the program works.

Councilor Spencer commented on the safety of the ballots asking Ms. Little to explain the process in more detail. Ms. Little reported that in the meeting with County Clerk Carye Blaney this afternoon she stated the signature poll books are in order and ready for the signature verification process. Ms. Little then showed Council a sample ballot envelope, and she and Mr. Nichols explained how to seal the ballot and use the envelopes. She added that envelopes can be mailed in, dropped at an official drop site, or brought to City Hall where they may be voted in a booth and then deposited as in a regular polling place. She added that the signature verification process is no different than for absentee ballots.

Councilor Selin asked how the process differs from absentee voting, and Ms. Little replied that the only difference is all registered voters will get a ballot not just absentee voters. Councilor Selin asked whether there is enough time to clean up the voter roll and Ms. Little replied there is.

Councilor Byrer asked whether the ballots will be scanned or hand counted. Ms. Little answered that everything will be done by hand. Councilors Selin and Byrer confirmed that everything is done and counted by hand, and Ms. Little concurred. Councilor Byrer stated that he would like to see more feedback from the electorate and that his level of confidence is not high enough to endorse the Vote-By-Mail Pilot Program. He also does not feel it will be cheaper than a traditional election. Councilor Selin asked if he has confidence in the officials we have working for the City and State on this initiative. Councilor Byrer replied, let the people decide.

Councilor Bane asked again why the program is being rushed for the 2011 election. Mayor Byrne suggested the answer be deferred to Mr. Nichols. He explained that the intent of the legislation is for Counties to participate in 2011 and 2013, to give 2 cycles to try and work through any issues to make it as efficient as possible. Mayor and Mr. Nichols then went over the timing of when the law was passed and when the application and approval were received for our City.

Councilor Shamberger then confirmed that the legislative intent was for Cities to use the Vote-By-Mail Pilot Program for the 2011 and 2013 election years. Mr. Nichols commented that if this election is a failure and Council wishes to discontinue the pilot program, then they may go back to a traditional election in 2013.

Councilor Gaddis asked whether the cost will be shouldered by the State, and Mayor Byrne replied that the election costs are the City's responsibility. Councilor Selin confirmed with Mr. Nichols that the State will help with the cost of public education.

Motion by Shamberger, carried by acclamation to end the suspension of the rules and the discussion of the matter. Mayor Byrne thanked all the participants for their comments. He then asked for any final remarks.

Councilor Gaddis added that he is not in agreement with the Vote-By-Mail Pilot Program. Councilor Selin stated that she has confidence in our Clerk and the State that we can try the program and see how it works. She also understands where others who do not support the program are coming from. Councilor Gaddis restated his concerns and added that he does not want the Vote-By-Mail Pilot Program to cause any undue damage to our budget because he is unconvinced about the costs

associated.

Councilor Shamberger remarked that she respects all the comments and will be voting yes based on confidence in our City Administrative Staff and support from the State. Councilor Spencer also voiced his support for the Vote-By-Mail Pilot Program and spoke about an article on another city's experience with the program. He feels the cost will not be a burden. Councilor Bane reiterated his views that the Vote-By-Mail Pilot Program will not be similar to absentee voting. He is also not comfortable with giving up traditional polling places. Councilor Byrer offered that his constituents are not in favor and therefore he is not in agreement either. Councilor Gaddis concurred that members of his ward are also not in agreement.

There being no further discussion, a vote was taken on the main motion. Motion to approve the above entitled Ordinance carried 4-3. Councilors Bane, Gaddis and Byrer voted NO.

- **AN ORDINANCE AMENDING ANNUAL BUDGET OF THE CITY OF MORGANTOWN:** The above entitled Ordinance was presented for second reading:

- AN ORDINANCE AMENDING THE FY 2010-2011 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND:

- After explanation from the City Manager Motion by Gaddis, second by Shamberger to approve the above entitled Ordinance. Motion carried 7-0.

- **BOARDS AND COMMISSIONS:** No appointments.

NEW BUSINESS: No New Business.

- **PUBLIC PORTION:**

Jim Manilla 202 Gordon Street, commented that Council should have been unanimous on the Vote-By-Mail Pilot Program issue. He raised questions about members of a Board or Commission having input in the person selected to fill an open seat. He also read aloud to Council portions of the City Charter having to do with the Mayor's duties and Council's interference with City administrative matters or the office of the City Manager.

Matthew Held 213 Kingwood Street, reiterated his concerns on the Vote-By-Mail Pilot Program, and restated his desire for the matter presented to the public in great detail.

David McKain 145 Hoffman Avenue, expressed his disappointment in Council for passing the Vote-By-Mail Pilot Program, and stated that he is not convinced of the cost of the election. He is a concerned citizen and feels the Vote-By-Mail Pilot Program will make the election process lengthier. He also protested that a non-citizen was allowed to talk during the suspension of the rules while discussion of the Vote-By-Mail Pilot Program Ordinance was underway. He thinks passing the Ordinance was the wrong decision.

Ron Cheng 284 Taylor Street, WVU Student Government, pledged the support of the SGA for the Vote-By-Mail Pilot Program and commended Council's action in approving the measure.

Ryan Campione 194 Seneca Hills, WVU Student Government, welcomed Mr. Moore to Morgantown and announced the unveiling of the WVU student snow removal plan.

There being no more appearances Mayor Byrne then declared the Public Portion closed.

SPECIAL COMMITTEE REPORTS: Mayor Byrne gave an update on the Sister City Commission and their latest endeavors, including a presentation on the Youth Exchange Program.

- **CITY MANAGERS REPORT:**

New Business:

1. Attached is a request from the Fire Chief to replace a Pickup truck used for various needs of the Fire Department. The existing truck is 16 years old and is becoming unreliable for the Fire Department. Total cost for a replacement truck, including snow plow, radio, and, warning lights, is approximately \$40,000.00. I recommend City Council approve \$40,000 to purchase a new F250 Diesel pickup truck for the Fire Department to be funded through the Capital Escrow Fund.

Motion by Selin second by Shamberger to approve the request from the Fire Chief. Motion carried 7-0.

2. Also attached is a memo from the Public Works Director that identifies the expected paving list for 2011. \$400,000 was included in the Capital Escrow Fund for paving in the 2010-2011 budget. The final number of streets to be paved on the main and contingency paving list will depend on the costs included in the construction contract. I recommend City Council approve the main and contingency paving list.

Motion by Spencer second by Selin to approve the 2011 Street Paving List. After discussion, motion carried 7-0.

Mr. Moore then announced the upcoming release of his first Weekly City Council Information Letter. He spoke of the benefits of this type of communication based on his past experiences. He informed Council of the upcoming selection of a new Finance Director and a new Police Chief. He told Council he will keep them updated during the process. Mr. Moore continued to elaborate on the importance of this new practice of City Administration.

CITY CLERK: Ms. Little announced that information packets for those wishing to run for the upcoming City Council Election are available now and candidates may start collecting signatures immediately after picking up the packets. They are due back February 14th. She also reminded Council of the upcoming Winter Session of the West Virginia Municipal League Conference.

CITY ATTORNEY'S REPORT: No Report.

REPORT FROM COUNCIL MEMBERS:

Councilor Bane: Councilor Bane apologized to those citizens who came to speak against the Vote-By-Mail Pilot Program. He also encouraged anyone who is interested to pick up a packet and run for City Council.

Councilor Gaddis: Councilor Gaddis also apologized to his constituents for the outcome of the Vote-By-Mail Pilot Program Ordinance vote. He promised he is listening to citizens' concerns and will do his best. He announced the Greenmont and South Park neighborhood association meetings, and welcomed everyone to attend.

Councilor Byrer: Councilor Byrer reported an issue concerning a sidewalk and a right-of-way. He reported that the situation is dangerous for pedestrians. He asked Mr. Moore to look into the matter. He announced his area neighborhood association meetings and that Mr. Moore is invited to those as well. He then reported that after careful consideration he will not be seeking re-election to Council this year.

Councilor Selin: Councilor Selin expressed her regrets that Councilor Byrer will not run for re-election. She then reiterated that the Vote-By-Mail Pilot Program is just that- a *Pilot Program*; and we should give the new system a try.

Councilor Shamberger: Councilor Shamberger inquired about the deer count and snow removal. She then thanked Ms. Little for all her time and energy concerning the Vote-By-Mail Pilot Program. She agreed that we should try this program and see how it works, as it can always be discontinued if it fails.

Councilor Spencer: Councilor Spencer concurred with Councilor Byrer's concerns about the sidewalk. He complimented Councilor Byrer and lamented his decision not to run. Councilor Spencer spoke about the Vote-By-Mail Pilot Program and stated that public information is important and he regrets the gap in communication with citizens concerning this matter. He likened the City to a

co-op stating everyone should contribute. He then mentioned the Google initiative and asked that we keep this issue in the forefront, citing its benefits to our community. Councilor Spencer then spoke about a Westover Annexation and related B&O taxes. He then requested an executive session be scheduled for Council to meet with the Municipal Judge. He concluded by complimenting new Officer Brandon Viola for his outstanding achievements at the Police Academy.

Mayor Byrne:

Mayor Byrne welcomed Mr. Moore as the new City Manager. He complimented the citizens of our community. He announced all of the MLK Day celebrations coming up. Mayor Byrne discussed his meeting with the BOPARC Chairman, stating that he wanted to get a feel for what attributes they were looking for in a candidate to fill the vacancy. He agreed that there needs to be better communication with the public on City issues. He asked that any Council Members interested in going to the WVML Conference please let Ms. Little know. He expressed to Councilor Byrer that he will be missed on Council after his term expiration. He commended Council for all their participation in the Vote-By-Mail Pilot Program debate. He stated that he understands that people do not have enough information about the program and the City should rectify that before the election.

Councilor Gaddis suggested that 2011 be designated "The Year of the Volunteer", and Council discussed how and what the year 2011 could be designated. Councilor Spencer suggested "The Year of the Neighborhood" and then announced the Water Quality Forum at the Airport on January 5th.

ADJOURNMENT: There being no further business, the meeting adjourned by unanimous consent at 9:30 p.m.

City Clerk

Mayor

***A FULL TRANSCRIPT OF ALL COUNCIL MEETINGS IS AVAILABLE ON CD AT THE MORGANTOWN CITY LIBRARY.**